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16 UNITED STATES BANKRUPTCY COURT
17 DISTRICT OF NEVADA

18 * * *

19 In re:
20
21 CETUS MORTGAGE, LTD.

Case No. BK-08-51131-GWZ
Chapter 7

22 Debtor.

23 _____/
24 ANGELIQUE L.M. CLARK,
25 TRUSTEE,

Adv. No. _____

26 Plaintiff,

27 vs.

**COMPLAINT TO AVOID TRANSFERS
PURSUANT TO 11 USC §§ 544, 547(b),
548(a) AND/OR NRS § 112.180**

28 STEVEN L. MOSS, in his capacity
as Trustee of the David S. Moss
Educational Trust; Trustee of the
Diana Moss Educational Trust; and
Trustee of the Moss Family Trust;
DAVID MOSS; DIANA MOSS;
STEVEN MOSS; and MOSSNEVADA,

1
2 LLC, a Nevada limited liability company,

3 Defendants.
4 _____/

5 Plaintiff Angelique L.M. Clark, Trustee, by and through her counsel Woodburn
6 and Wedge complains and alleges as follows:
7

8 I

9 **PARTIES, JURISDICTION AND VENUE**

10 1. This case presents claims that arise under Title 11 USC and, therefore,
11 this Court has jurisdiction over this matter pursuant to the provisions of 28 USC §
12 1334(b).

13 2. This matter presents issues relating to the determination, avoidance and
14 recovery of preferential transfers and fraudulent conveyances and, therefore, the claims
15 alleged herein are core proceedings under the provisions of 28 USC § 157(b)(2)(F) and
16 (H).
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18 3. This Court is a proper venue for this case under the provisions of 28 USC
19 § 1409(a).

20 4. Plaintiff Angelique L.M. Clark ("Clark") is the duly appointed trustee of the
21 Chapter 7 bankruptcy estate of Cetus Mortgage, Ltd. ("Cetus") pending before this Court
22 as Case No. BK-08-51131 ("Bankruptcy").

23 5. The named Defendants ("Defendants") conducted business with Cetus
24 within Washoe County, Nevada, and the claims asserted herein relate to such business
25 activities.
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2 6. Clark is uncertain whether the Defendants' full legal names, the nature of
3 the Defendants' existences (corporation, partnership, limited liability company, etc.) and
4 the named Trustee(s) of the Trust, if applicable, are correct and, therefore, reserves the
5 right to amend this Complaint at the appropriate time to properly identify any defendant
6 that may not be properly named or designated.
7

8 II

9 **GENERAL ALLEGATIONS**

10 7. At all times relevant to the matters alleged herein, Cetus was a Nevada
11 corporation doing business in Washoe County, Nevada.
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13 8. Cetus was licensed as a mortgage company by the Mortgage Lending
14 Division of the State of Nevada Department of Business and Industry and was engaged in
15 the business of brokering and servicing loans secured by residential and commercial
16 properties located mostly in Northern Nevada.

17 9. Typically, loans brokered by Cetus were funded by investments solicited
18 from third party investors willing to loan funds to Cetus borrowers. The loans brokered by
19 Cetus were occasionally funded by a single investor, but in most instances the loans were
20 funded with monies pooled from a group of investors.
21

22 10. In July 2008, the State of Nevada, Department of Business and Industry,
23 Division of Mortgage Lending seized Cetus' assets on the basis of several complaints from
24 investors that Cetus had:

25 A. Forged signatures on property conveyances;

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- B. Altered property descriptions in deeds of trust without proper authorization;
- C. Failed to properly account for investors' funds; and
- D. Committed other violations of law.

11. Cetus allowed its Nevada mortgage company license to expire without renewal on June 30, 2008.

12. Cetus filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code with this Court on July 9, 2008, commencing the above captioned Bankruptcy.

13. On July 17, 2008, Clark was appointed Trustee of Cetus' bankruptcy estate pursuant to the provisions of 11 USC § 1104. Cetus' Chapter 11 case was converted to Chapter 7 proceedings on August 19, 2008, and Clark was subsequently appointed Trustee of Cetus' Chapter 7 estate.

14. Pursuant to 11 USC § 704, one of the duties of bankruptcy trustees is to investigate the financial affairs of the debtor. Clark has investigated, and continues to investigate, Cetus' financial affairs. To date, Clark's investigation has revealed, among other things, that:

- A. Contrary to Nevada state law and regulations governing mortgage companies, Cetus commingled investors' funds;
- B. Cetus used monies invested by lenders for purposes other than for which they were invested; and
- C. Cetus, in some instances, failed to repay investors when loans they funded were paid in full by the borrowers and, instead, used the repayment funds to pay other investor claims or fund its operations. In turn, Cetus used other investors' investment funds to continue to pay interest to the prior investors

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2 to make it appear borrowers were still making interest payments on the
3 loans.

4 15. Based upon her investigations to date, Clark alleges that Cetus was
5 engaged in a phony investment scheme in which:

- 6 A. Monies paid by later investors were, at times, used to pay returns on
7 investments to earlier investors while no actual return had been received on
8 behalf of the earlier investors;
9 B. Monies that properly belonged to certain investors were used to continue to
10 pay interest on investments made by other investors in an attempt to cover
11 up the fact the other investors' loans had gone into default; and
12 C. Monies invested by later investors was used to fund prior loans from which
Cetus had improperly diverted funds to cover up the fact loan funds had
been misused.

13 16. Clark alleges that Cetus engaged in the phony investment activities
14 referenced in Paragraph 14, above, for the purpose of causing investors, old and new, to
15 continue to invest with Cetus, i.e. Cetus was engaged in a Ponzi scheme.

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17 III

18 FIRST CLAIM FOR RELIEF
19 (Preference—11 USC §547(b))

20 17. Clark repeats each and every allegation contained in Paragraphs 1 through
21 16, above, and incorporates the same herein as if set forth in their entirety.

22 18. Based upon information available from Cetus' books and records, Clark is
23 informed and believes, and on that basis alleges, that from and after April 10, 2008, and
24 up until Cetus filed for bankruptcy relief, it made the following payments to the
25 Defendants:

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DEFENDANT	DATE	CHECK NO.	AMOUNT
David Moss Education Trust	05/01/2008	96968	\$322.50
	05/06/2008	97106	\$322.50
	05/29/2008	97634	\$322.50
	06/13/2008	97911	\$322.50
Diana Moss Educational Trust	05/29/2008	97635	\$645.00
Moss Family Trust	04/22/2008	96688	\$900.00
	05/01/2008	96970	\$2,150.00
	05/06/2008	97107	\$1,075.00
	05/22/2008	97483	\$900.00
	05/29/2008	97636	\$2,150.00
	06/13/2008	97912	\$1,075.00
	06/19/2008	98011	\$900.00
MossNevada	04/18/2008	96647	\$900.00
	04/22/2008	96689	\$900.00
	05/01/2008	96885	\$3,866.00
	05/01/2008	96911	\$1,200.00
	05/01/2008	96971	\$1,075.00
	05/06/2008	97108	\$1,075.00
	05/22/2008	97453	\$900.00
	05/22/2008	97484	\$900.00
	05/29/2008	97618	\$1,200.00
	05/29/2008	97637	\$1,075.00
	06/06/2008	97712	\$3,866.00
	06/13/2008	97913	\$1,075.00
	06/19/2008	98000	\$900.00
	06/19/2008	98012	\$900.00

19. At the time the payments set forth in Paragraph 18, above, were made the Defendants were creditors of Cetus for purposes of 11 USC §547(b)(1).

20. The payments referenced in Paragraph 18, above, were for or on account of an antecedent debt owed by Cetus before the payments were made.

21. Cetus was insolvent at the time it made the payments referenced in Paragraph 18, above.

23. Should the Defendants be allowed to retain the payments referenced in Paragraph 18, above, they would receive more than they would otherwise receive if (a) this case were a chapter 7 case under Title 11; (b) the transfer had not been made; and (c) they received payment of such debt to the extent provided by Title 11.

Wherefore, Clark prays for relief as hereinafter set forth.

SECOND CLAIM FOR RELIEF
(Fraudulent Transfers—11 USC §548(a)(1)(A))

26. Based upon information available from Cetus' books and records, Clark is informed and believes, and on that basis alleges, that from and after July 10, 2006, and up until Cetus filed for bankruptcy relief on July 9, 2008, it made payments to the Defendants and/or gave the Defendants interests in promissory notes, and that the aggregate value of the payments and the interests in the notes exceeded the amounts the Defendants had invested with Cetus ("Excess Transfers").

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2 28. Cetus made the Excess Transfers listed in Paragraph 26, above, with actual
3 intent to hinder, delay, or defraud persons or entities to which Cetus was, or would
4 become, indebted.

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6 29. The Excess Transfers referenced in Paragraph 26, above, constitute
7 fraudulent transfers pursuant to 11 USC §548(a)(1)(A) that may be avoided by this Court.

8 Wherefore, Clark prays for relief as hereinafter set forth.

9 **V**

10 **THIRD CLAIM FOR RELIEF**
11 **(Fraudulent Transfers—11 USC §548(a)(1)(B))**

12 30. Clark repeats each and every allegation contained in Paragraphs 1 through
13 29, above, and incorporates the same herein as if set forth in their entirety.

14 31. At the time Cetus made the Excess Transfers referenced in Paragraph 26,
15 above, Cetus received less than equivalent value in exchange for the payment.

16 32. At the time Cetus made the Excess Transfers referenced in Paragraph 26,
17 above, Cetus was either insolvent or rendered insolvent as a result of the payments.

18 33. The Excess Transfers referenced in Paragraph 26, above, constitute
19 fraudulent transfers pursuant to 11 USC §548(a)(1)(B) that may be avoided by this Court.

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21 Wherefore, Clark prays for relief as hereinafter set forth.

22 **VI**

23 **FOURTH CLAIM FOR RELIEF**
24 **(Fraudulent Transfers—NRS §112.180(1)(a))**

25 34. Clark repeats each and every allegation contained in Paragraphs 1 through
26 33, above, and incorporates the same herein as if set forth in their entirety.

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2 35. Pursuant to 11 USC §544, Clark has the rights and powers of a lien creditor
3 and as a successor to certain creditors and purchasers which provides her with standing
4 to bring any fraudulent transfer actions that may exist under non-bankruptcy law.
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6 36. Based upon information available from Cetus' books and records, Clark is
7 informed and believes, and on that basis alleges, that from and after July 10, 2004, and up
8 until Cetus filed for bankruptcy relief on July 9, 2008, it made payments to the Defendants
9 and/or gave the Defendants interests in promissory notes, and that the aggregate value of
10 the payments and the interests in the notes exceeded the amounts they had invested with
11 Cetus ("Excess Transfers").
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13 37. Cetus made the Excess Transfers listed in Paragraph 36, above, with actual
14 intent to hinder, delay, or defraud its creditors.

15 38. The Excess Transfers referenced in Paragraph 36, above, constitute
16 fraudulent transfers pursuant to NRS §112.180(1)(a) that may be avoided by this Court.

17 Wherefore, Clark prays for relief as follows:

18 A. For an order voiding the payments referenced in Paragraph 15 as
19 preferential transfers under the provisions of 11 USC §577(b)(1);
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21 B. For an order voiding the Excess Transfers referenced in Paragraph 26 as
22 fraudulent transfers under the provisions of 11 USC § 548(a)(1)(A);

23 C. For an order voiding the Excess Transfers referenced in Paragraph 26 as
24 fraudulent transfers under the provisions of 11 USC § 548(a)(1)(B);

25 D. For an order voiding the Excess Transfers referenced in Paragraph 36 as
26 fraudulent transfers under the provisions of NRS §112.180(1)(a);
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2 E. For judgment against the Defendants, or any immediate or mediate
3 transferee of any preferential payment or fraudulent transfer, in an amount to be proven at
4 the trial in this matter, as provided in 11 USC §550;

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6 F. For an award of costs incurred in connection with the prosecution of this
7 matter;

8 G. For an award of attorneys' fees incurred in connection with the prosecution
9 of this matter; and

10 H. For such other and further relief as to this Court is necessary or appropriate
11 under the circumstances.

12 DATED this 7th day of July, 2010.

13
14 WOODBURN and WEDGE

15
16 By 

17 John F. Murtha, Esq.
18 Attorneys for Trustee
19 Angelique L.M. Clark
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